

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY MARCH 25, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 2136**

---

**Introduced by Assembly Member Mendoza**

February 20, 2008

---

An act to amend Section 17538.9 of the Business and Professions Code, relating to advertising.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2136, as amended, Mendoza. Prepaid calling cards.

Existing law regulates the advertising and sale of prepaid calling cards and services. Existing law requires an advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services to include specified information, and requires certain information to be legibly printed on a prepaid calling card. ~~The bill~~ *Existing law* also requires a company that sells prepaid calling cards and services and a vendor to make certain disclosures regarding fees and surcharges on the card and packaging and at the point of sale, and requires the company to maintain a toll-free customer service telephone number, meeting specified requirements. Existing law requires a company that issues prepaid calling cards or services to provide a refund within 60 days to any purchaser of a card or services if the network services associated with the card or services fail to operate in a commercially reasonable manner. Existing law makes it a crime to violate any of these provisions.

This bill would ~~instead require any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or~~

~~services to be disclosed as the effective rate, as defined, and to clearly and conspicuously disclose specified information impose additional requirements upon a company that issues prepaid calling cards or services, including, among others, a requirement to make available, and, once purchased, to provide, the promoted or advertised minutes or rates, and, upon a rate increase at the time of recharge, a requirement that the customer be informed of that increase. The bill would also require the information that is to be printed legibly on the a card or packaging to be readable without having to open the packaging, and would require that information to be current, as specified, and to include if applicable, the date upon and amount by which an effective rate or ancillary charge, as defined, may increase. The bill would apply these disclosure requirements specifically to retail vendors. The bill would prohibit a person from offering or selling any prepaid calling card or prepaid calling services that do not contain the information required to be disclosed on the card or packaging, and would require a distributor that sells directly to a retail vendor to provide the vendor with the current information required to be displayed by the vendor, and would prohibit a person from offering or selling a prepaid calling card or prepaid calling service if the advertised or disclosed effective rate or ancillary charges have expired. The bill would further require a company that sells prepaid calling cards and services to provide a voice prompt at the beginning of each call that states the effective rate for that call in a specified form total number of prepaid minutes that are available for that call. The bill would require a refund based on the failure of network services associated with prepaid calling cards or services to be made within 30 days.~~

By creating new requirements with respect to the advertising and sale of prepaid calling cards, the violation of which would be a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17538.9 of the Business and Professions Code is amended to read:

17538.9. (a) For the purposes of this section:

(1) "Ancillary charges" means all surcharges, taxes, fees, connection charges, maintenance fees, monthly or other periodic fees, per-call access fees, or other assessments or charges of any kind, however denominated, that may be imposed in connection with the use of a card or services, other than the per unit or per minute rate charged.

(2) "Cellular telephone services" means facilities-based, commercial mobile telephone services.

(3) "Company" refers to any entity providing prepaid calling services to the public using its own or a resold telecommunications network.

(4) "Distributor" means any person who offers or sells a card or services to a retail vendor or to any other person for ultimate resale to a retail vendor.

~~(5) "Effective rate" means the rate that would be charged if the entire remaining value of the card or service were consumed in one continuous call to a stated or dialed destination, and shall be determined as provided in subparagraph (A) and expressed as provided in subparagraph (B).~~

~~(A) The effective rate shall be based on the applicable per unit charge and all ancillary charges that the person disclosing the effective rate should reasonably know the caller would incur in making and completing the call. Ancillary charges dependent on an individual caller's usage that are not reasonably known at the time the disclosure of the effective rate is made need not be included in determining the effective rate (e.g., an ancillary charge for placing a call at a pay telephone if the person disclosing the effective rate does not reasonably know at the time of the disclosure that the card or service will be used at a pay telephone).~~

~~(B) The effective rate shall be expressed as an amount per unit (e.g., \$0.10 per minute) or the total number of minutes available for the continuous call.~~

~~(6)~~

(5) "Prepaid calling card" or "card" means any object containing an access number and authorization code that enables a consumer

1 to use prepaid calling services. It does not include any object of  
2 that type used for promotional purposes.

3 ~~(7)~~

4 (6) “Prepaid calling services” or “services” refers to any prepaid  
5 telecommunications service that allows consumers to originate  
6 calls through an access number and authorization code, whether  
7 manually or electronically dialed.

8 ~~(8)~~

9 (7) “Retail vendor” means any person who sells a card or service  
10 to a consumer for use in making telephone calls.

11 (b) The following standards and requirements for consumer  
12 disclosure and services shall apply to the advertising and sale of  
13 prepaid calling cards and prepaid calling services:

14 (1) Any advertisement of the price, rate, or unit value in  
15 connection with the sale of prepaid calling cards or services shall  
16 ~~be disclosed as the effective rate, and shall clearly and~~  
17 ~~conspicuously disclose all of the following information:~~

18 ~~(A) The effective rate is valid if the entire value of the card is~~  
19 ~~consumed in one continuous call, unless the effective rate applies~~  
20 ~~to all calls. This disclosure shall be printed in type at least as large~~  
21 ~~as the largest type used to state the effective rate and shall appear~~  
22 ~~immediately before or above all of the effective rates to which it~~  
23 ~~applies.~~

24 ~~(B) If more than one effective rate applies to the same~~  
25 ~~destination, the highest effective rate for the destination shall be~~  
26 ~~the most prominently disclosed and the conditions applicable to~~  
27 ~~any stated effective rate, such as limitations based on the day of~~  
28 ~~the week or the time of day in which the card or service is used,~~  
29 ~~shall be disclosed as clearly and conspicuously as the effective~~  
30 ~~rate to which the conditions apply.~~

31 ~~(C) Any geographic limitation on any effective rate.~~

32 ~~(D) If any effective rate or ancillary charge disclosed at the time~~  
33 ~~a card or service is purchased may increase after purchase, the date~~  
34 ~~on which the increase may occur and the largest percentage by~~  
35 ~~which the rate or charge may increase. This disclosure shall be~~  
36 ~~made as clearly and conspicuously as the most prominently~~  
37 ~~disclosed effective rate.~~

38 ~~(E) Ancillary charges that are not included in the stated effective~~  
39 ~~rate, include a clear and conspicuous disclosure of any geographic~~  
40 ~~limitation to the advertised price, rate, or unit value, and of any~~

1 *ancillary charges applicable to the advertised price, rate, or unit*  
2 *value.*

3 (2) The following information shall be legibly printed on the  
4 card:

5 (A) The name of the company.

6 (B) A toll-free customer service number.

7 (C) A toll-free network access number, if required to access  
8 service.

9 (D) The authorization code, if required to access service.

10 (E) The expiration date or policy, if applicable, except where  
11 paragraph ~~(9)~~ (12) applies.

12 (3) The company shall print legibly on the card or packaging,  
13 so that it may be read without having to open any packaging, and  
14 the retail vendor shall make available clearly and conspicuously  
15 in a prominent area immediately proximate to the point of sale of  
16 the prepaid calling card or prepaid calling services the following  
17 information, which shall be current at the time of printing and for  
18 as long as it is displayed:

19 (A) The value of the card and all ancillary charges.

20 (B) Ancillary charges for international calls to each country for  
21 which the card may be used or, in lieu of disclosing ancillary  
22 charges for each country, the highest ancillary charges for any  
23 international calls applicable on that card and any additional or  
24 different prices, rates, or unit values applicable to international  
25 usage of the prepaid calling card or prepaid calling services.

26 (C) The minimum charge per call, such as a three-minute  
27 minimum charge, if any.

28 (D) The definition of the term “unit,” if applicable.

29 (E) The billing decrement.

30 (F) The name of the company.

31 (G) The recharge policy, if any.

32 (H) The refund policy, if any.

33 (I) The expiration policy, if any.

34 ~~(J) If any effective rate or ancillary charge disclosed at the time~~  
35 ~~a card or service is purchased may increase after purchase, the date~~  
36 ~~on which the increase may occur and the largest percentage by~~  
37 ~~which the rate or charge may increase.~~

38 ~~(K)~~

39 (J) The 24-hour customer service toll-free telephone number  
40 required in paragraph ~~(7)~~: (10).

1     (4) *All minutes or rates, or both, promoted or advertised on any*  
2 *card, packaging, or point of sale material relating to that card or*  
3 *service shall be available to, and achievable by, the customer.*

4     (5) *Before a customer has recharged a card or service, no*  
5 *company shall provide fewer minutes than those stated, charge*  
6 *more than the rate stated, or charge more for ancillary services*  
7 *than stated on the card or packaging, or in an advertisement*  
8 *available to the public at the time the card or service is purchased.*

9     (6) *Service may be recharged by the customer at a rate higher*  
10 *than the rate at initial purchase or last recharge. However, the*  
11 *customer shall be informed of any increased rates or charges at*  
12 *the time of recharge.*

13     ~~(4)~~  
14     (7) *If a language other than English is used on the card or*  
15 *packaging to provide dialing instructions to place a call or to*  
16 *contact customer service, the information required by paragraph*  
17 *(3) shall also be disclosed in that language in the point of sale*  
18 *disclosure in the manner described in paragraph (3).*

19     ~~(5)~~  
20     (8) *If a language other than English is used in the advertising*  
21 *or promotion of the card or prepaid calling services or is used on*  
22 *the card or packaging other than for dialing instructions, the*  
23 *information required by paragraph (3) shall also be disclosed in*  
24 *that language on the card or packaging and in the point of sale*  
25 *disclosure in the manner described in paragraph (3).*

26     ~~(6) A company shall provide a voice prompt, immediately after~~  
27 ~~a caller enters a PIN and destination number, that states the~~  
28 ~~effective rate for that call substantially in either of the following~~  
29 ~~forms:~~

30     ~~(A) “You have [insert number] minutes available if you use up~~  
31 ~~your card or service on this call.”~~

32     ~~(B) “Your rate is [insert number] cents per minute if you use~~  
33 ~~up your card or service on this call.”~~

34     (9) *A company shall provide a voice prompt at the beginning*  
35 *of each call that indicates the total number of prepaid minutes that*  
36 *are available for that call.*

37     ~~(7)~~  
38     (10) *A company shall establish and maintain a toll-free customer*  
39 *service telephone number that shall meet the following*  
40 *requirements:*

1 (A) A live operator shall answer incoming calls to the telephone  
2 number 24 hours a day, seven days a week.

3 (B) The telephone number shall have sufficient capacity and  
4 staffing to accommodate a reasonably anticipated number of calls  
5 without incurring a busy signal or undue wait. The company shall  
6 provide customer service in each language used on a prepaid calling  
7 card or its packaging and in the advertising or promotion of the  
8 prepaid calling card or prepaid calling services.

9 (C) The telephone number shall allow consumers to lodge  
10 complaints and obtain information on all of the following:

- 11 (i) All rates and ancillary charges.  
12 (ii) The company's recharge, refund, and expiration policies.  
13 (iii) The balance of use available in the consumer's account, if  
14 applicable.

15 (D) A company shall not impose any ancillary charge related  
16 to obtaining customer service, including any charge related to  
17 connecting with the customer service number or waiting to speak  
18 to a live operator.

19 A company offering prepaid cellular telephone services shall be  
20 deemed to be in compliance with the requirements of this paragraph  
21 if, when a request for information is made outside of normal  
22 business hours, that company provides the information requested  
23 on the next business day.

24 ~~(8)~~

25 ~~(11)~~ A company that issues prepaid calling cards or prepaid  
26 calling services shall provide a refund to any purchaser of a prepaid  
27 calling card or prepaid calling services if the network services  
28 associated with that card or services fail to operate in a  
29 commercially reasonable manner. The refund shall be in an amount  
30 not less than the value remaining on the card or in the form of a  
31 replacement card, and shall be provided to the consumer within  
32 30 days from the date of receipt of notification from the consumer  
33 that the card has failed to operate in a commercially reasonable  
34 manner.

35 ~~(9)~~

36 ~~(12)~~ Cards without a specific expiration date or policy printed  
37 on the card, and with a balance of service remaining, shall be  
38 considered active for a minimum of one year from the date of  
39 purchase, or if recharged, from the date of the last recharge.

40 ~~(10)~~

(13) In the case of prepaid calling cards or services utilized at a pay-phone telephone, the company may provide voice prompt notification of any ancillary charges related to pay-phone telephone usage, in lieu of providing notice of those ancillary charges as required by paragraph (1) and by subparagraph (A) of paragraph (3), provided that the company provides users of prepaid calling cards or services with reasonable time to terminate the call after notification of the ancillary charges related to pay-phone telephone usage without incurring any charge for the call.

~~(11)~~

(14) A company shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.

~~(12)~~

(15) A company may not impose any ancillary charges that are not disclosed as required by this section or that exceed the amount disclosed by the company.

~~(13)~~

(16) A company may not impose any charges if the consumer is not connected to the number called. For the purpose of this paragraph, the customer shall not be considered connected to the number called if the customer receives a busy signal or the call is unanswered.

~~(14)~~

(17) The value of the card and the amount of any ancillary charges, that are required to be disclosed by paragraph (3), shall be expressed in the same format. If the value of a card is expressed in minutes, the minutes shall be identified as domestic or international and the identification shall be printed on the same line or next line as the value of the card in minutes.

~~(15)~~

(18) No person shall offer or sell any prepaid calling card or prepaid calling services that do not contain the information required to be disclosed on the card or packaging as provided in paragraph (3).

~~(16)~~

(19) A distributor that sells directly to a retail vendor shall provide the retail vendor with the current information required by paragraph (3) in a form that may be displayed by the retail vendor as provided in paragraph (3).



1     ~~(17) A retail vendor shall remove from public display any~~  
2     ~~information required to be disclosed by paragraph (3) that is no~~  
3     ~~longer current and any advertisement of any effective rate or~~  
4     ~~ancillary charge that has expired.~~

5     ~~(18) No person shall offer or sell a prepaid calling card or~~  
6     ~~prepaid calling service if any advertised or disclosed effective rate~~  
7     ~~or ancillary charge has expired.~~

8     SEC. 2. No reimbursement is required by this act pursuant to  
9     Section 6 of Article XIII B of the California Constitution because  
10    the only costs that may be incurred by a local agency or school  
11    district will be incurred because this act creates a new crime or  
12    infraction, eliminates a crime or infraction, or changes the penalty  
13    for a crime or infraction, within the meaning of Section 17556 of  
14    the Government Code, or changes the definition of a crime within  
15    the meaning of Section 6 of Article XIII B of the California  
16    Constitution.

17  
18  
19     CORRECTIONS:

20     Text—Page 4 and 5.  
21